

## CHARLES W. CUTTER—SURETIES OF.

[To accompany Joint Res. No. 20.]

MARCH 23, 1860.

MR. TAPPAN, from the Committee on Claims, made the following

### REPORT.

*The Committee on Claims, to whom was referred the memorial of Hannah Cutter, executrix, James W. Emery and others, asking to be relieved from a judgment rendered against them as sureties for Charles W. Cutter, formerly navy agent at Portsmouth, New Hampshire, report:*

That after mature investigation of the case they have come to the conclusion that the relief sought should be granted. The committee find the facts of the case to be, in brief, substantially as follows:

On the 3d of April, 1850, Charles W. Cutter, then navy agent at Portsmouth, New Hampshire, made a requisition upon the Navy Department for \$18,400, on account of the floating dock then building at that yard, which requisition, duly approved by the commandant of the yard, was expressly stated to be for the *seventh* payment on account of said dock, the agent stating that the amount would be probably required on the 17th of that month.

On the 23d of April another requisition was made by said navy agent for the same sum of \$18,400, on account of the same floating dock, which requisition was expressly stated to be for the same *seventh* payment, and which was also approved by the commandant of the yard.

It further appears that the Navy Department, without adverting to the fact that the requisitions expressed on their face that they were for the same payment, forwarded to the said agent *double the amount* which should have been forwarded, viz: \$36,800 instead of \$18,400. The excuse for which laches is the "press of business" at the time in the bureau.

It also appears that the \$18,400 thus acknowledged to have been wrongfully placed in the hands of said agent was suffered to remain there fifteen months without any effort on the part of the department to correct its error, at the expiration of which time said agent had become hopelessly insolvent, and was soon after removed from office; that subsequently a suit was brought in the circuit court of the United States for the district of New Hampshire, and judgment recovered

against the sureties for \$18,398 83, on which judgment execution was issued bearing date October 25, 1856. On said execution there has been paid and satisfied by the sureties, in cash and other property, and by levy upon certain real estate mentioned in said memorial, the sum of \$14,826 24. The sureties ask to have the amount they have been compelled to pay refunded to them or their representatives, and that said real estate may be released from any claim under said levy, and the committee are of opinion that their request should be granted.

It is clear in this case that the burden thus thrown upon the sureties arose from the acknowledged carelessness of the officers of the government. Mr. Dobbin, Secretary of the Navy, in his letter dated January 15, 1855, to the chairman of the Committee on the Judiciary, says: "It is very evident that two requisitions were drawn by the navy agent in the same month for the same object. *This ought not to have been so.* It was not discovered by the chief of the bureau at the time, nor until July of the following year, some fifteen months after the transaction. *This ought not to have been so either.*" In the case of the People of New York vs. Jansen, (7 Johnson, 332,) a case similar in principle to this, Judge Thompson, afterwards of the Supreme Court of the United States, decided that the sureties, in calculating their liabilities, *had a right to rely upon the performance by public officers of their duty.* This principle was acknowledged and established in the case of Thomas Ap Catesby Jones, surety for a postmaster at Norfolk, Virginia, who was released, by an act of the 33d Congress, from a judgment obtained against him, as well as reimbursed for money paid under said judgment, in consequence of the neglect of the Post Office Department, in allowing funds unreasonably to accumulate in the hands of said postmaster. No principle of equity seems more clear than that a neglect of duty on the part of a creditor, whether public or private, ought to discharge a surety from the consequences of such neglect. The negligence of the government officer in this case has thrown upon the sureties a liability which they never could have contemplated, for they did not undertake to be responsible for the carelessness of the Navy Department.

The committee therefore report a joint resolution for the relief of said sureties.